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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/557,234	04/24/2000	Patrick J. O'Donnell	PODON.001A	8230

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EXAMINER
VALENTI, ANDREA M

ART UNIT	PAPER NUMBER
3643	6

DATE MAILED: 03/12/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/557,234	O DONNELL, PATRICK J.	
	Examiner	Art Unit	
	Andrea M. Valenti	3643	

-- The MAILING DATE of this communication app ars on th cover she t with the correspond nce address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *04 February 2002* .

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-38* is/are pending in the application.

4a) Of the above claim(s) *4-6,10 and 16* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-3,7-9,11-15 and 17-38* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

PETER M. POON
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600

pmp

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *24 April 2000* is/are: a)☐ accepted or b)☒ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other:

DETAILED ACTION

Drawings

The drawings are objected to because:

Fig. 2, element number '22' should be --20--

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 9, 17, 19, 20, and 35-38 are rejected under 35 U.S.C. 102(b) as being anticipated by Kimbrew-Walter Roses "Jet-All" sprayer.

Regarding Claims 19, 20, and 36, "Jet-All" teaches the method of a hand held spraying apparatus in which the nozzle is placed adjacent an underside of a plant leaf. The apparatus comprises a handle, an elongated body portion, a nozzle portion at a distal end of the body portion, and the nozzle portion adapted to direct water flow outwardly from the circumference of the nozzle portion, a longitudinal axis of the nozzle is generally horizontal. The "Jet-All" method includes providing a source of water under pressure, placing the spraying apparatus into communication with the source of water

under pressure, and advancing and retracting the apparatus so that a flow of water impacts the undersurface of the leaf (see attached brochure page).

Regarding Claims 9, "Jet-All' teaches at least part of the pressurized water flow is directed outwardly from the nozzle at an acute angle relative to a longitudinal axis of the nozzle ("Jet-All" flier).

Regarding Claim 17, "Jet-All" teaches the handle portion and the body portion are integrally formed ("Jet-All" flier).

Regarding Claim 35, "Jet-All" teaches the broadly presented claim language that the elongated body and the nozzle portion being **substantially** straight and having **substantially** the same longitudinal axis.

Regarding Claim 37, "Jet-All" inherently teaches the step of holding the elongated body at a generally horizontal attitude and advancing and retracting the nozzle through the application of the apparatus to a variety of different size plants.

Regarding Claim 38, "Jet-All" teaches that elongated body is at least 18 inches long (See "Jet-All" flier).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claim 1-3, 7-8, and 30-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kimbrew-Walter Roses "Jet-All" sprayer in view of U.S. Patent No. 5,573,187 to Proctor.

Regarding Claim 1, 29, and 30, "Jet-All" teaches a hand held spray apparatus with a substantially rigid tubular handle portion adapted to be connected to a source of pressurized water, a substantially straight proximal section, a distal end at least about one foot long, and a bend point between the proximal section and the distal section.

"Jet-All" teaches that the nozzle portion is located at the distal end of the handle portion and the nozzle is adapted to direct a flow of pressurized water to create a substantially planar wall of water directed outwardly about the circumference of the nozzle. The wall of water is substantially perpendicular to a longitudinal axis of the nozzle portion.

"Jet-All" discloses that the rotation axis is defined parallel to the handle distal section and through a point adjacent a proximal end of the handle portion. Rotating the apparatus about the rotation axis when the handle distal section is in a generally horizontal attitude changes the elevation of the distal section without changing the attitude (see attached "Jet-All" flier).

"Jet-All" is silent on a substantially straight distal section. However, Proctor teaches a hand held spraying apparatus with straight distal extension section with a nozzle that directs a flow of pressurized water to create a substantially planar wall of water directed outwardly about the circumference of the nozzle, the wall of water is substantially perpendicular to a longitudinal axis of the nozzle portion (Proctor Fig.2

Element #20 and 36, Fig.1 wall of water, Col.2 line 15-16, Abstract, and Fig.2 Element #22,12, 18, 36, and 32). It would have been obvious to one of ordinary skill in the art to modify the teachings of "Jet-All" with the teachings of Proctor since the distal sections of each apparatus is merely an alternate equivalent nozzle extension off of a handle and the modification is merely a change in shape to enhance the ergonomic design of the apparatus and to increase the spray coverage area for different size/shape of plants. A modification of shape or size does not present a patentably distinct limitation.

Regarding Claim 2, "Jet-All" as modified teaches that the nozzle portion is adapted to create a second substantially planar wall of water, the second wall of water being spaced apart from the substantially parallel first wall of water (Proctor Fig. 1 Element #38 and water spray lines).

Regarding Claim 3, "Jet-All" as modified teaches that the nozzle portion has a cross sectional profile not substantially larger than a profile of the handle (Proctor Fig. 2 Element #20 and 36).

Regarding Claims 7 and 8, "Jet-All" as modified teaches that the nozzle portion is adapted to create a second wall of pressurized water, the second wall being spaced from and substantially parallel to the first wall, and the walls of water are spaced between about 1" to 6" apart (Proctor Fig. 1 Element #20, 38 and the two planar walls of spray lines).

Regarding Claim 31, "Jet-All" as modified teaches the distal section is longer than the proximal section ("Jet-All" flier).

Regarding Claim 32, "Jet-All" as modified is silent on the proximal and distal sections are arranged at an angle of between about 30-60 degrees relative to one another. However, applicant provides not criticality for this angle in the specification. It would have been obvious to one of ordinary skill in the art to obtain the angle range through routine tests and experimentation for ergonomic enhancement of the device.

Claims 12-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kimbrew-Walter Roses "Jet-All" sprayer as applied to claim 1 above, and further in view of U.S. Patent No. 3,737,105 to Arnold et al.

Regarding Claim 12, "Jet-All" as modified teaches that the nozzle portion comprises a tube and an end plug, the end plug having a plug body and a dispersing plate, and at least a portion of the plug body lying within the tube (Proctor Fig. 3 Element #40, 36, and 20 and Col. 3 line 40-41). Proctor is silent on a space defined between the dispersing plate and a distal end of the tube so that water flowing through the nozzle portion flows between the tube and the plug body and through the space. However, Arnold et al teaches a spray nozzle with an end plug and a dispersing plate creating a space between the dispersing plate and a distal end of the tube, so that water flowing through the nozzle portion flows between the tube and the plug body and through the space (Arnold et al Fig. 1 Element #45, 46, 40, 35 and 21). It would have been obvious to one of ordinary skill in the art to modify Proctor with the teachings of Arnold et al, since the nozzles are merely alternate equivalent devices designed to

perform the same intended function of dispersing a wall of water and are selected to satisfy certain manufacturing or economic design parameters.

Regarding Claim 13, "Jet-All" as modified by Arnold et al discloses that the nozzle portion additionally comprises a second tube (Arnold et al Fig. 1 Element #19) and an intermediate plug attached to a proximal end of the first tube (Arnold et al Fig. 1 Element #25), the intermediate plug having a substantially hollow plug body and a dispersing plate (Arnold et al Fig. 1 Element # 22 and 28), at least a portion of the plug body lying within the second tube, and a space is defined between the dispersing plate and a distal end of the second tube so that a portion of water flowing through the nozzle portion flows between the second tube and the plug body and through the space (Arnold et al Fig. 1 Element #30), and a portion of water flowing through the nozzle portion flows through the hollow plug body and into the first tube (Arnold et al Fig. 1 Element #45 and 46).

Regarding Claim 14, "Jet-All" as modified by Arnold et al discloses that the plug body includes ribs extending therefrom, and the plug body is attached to the tube by the ribs (Arnold et al Fig. 1 bottom portion of Element #21 above Element #15).

Regarding Claim 15, "Jet-All" as modified by Arnold et al discloses that the dispersing plate comprises spacers extending therefrom and the spacers are adapted to contact the end of the tube so that the dispersing plate is spaced at a fixed distance from the end of the tube (Arnold et al Col. 2 lines 34-44).

Claim 18 rejected under 35 U.S.C. 103(a) as being unpatentable over Kimbrew-Walter Roses "Jet-All" sprayer.

Regarding Claim 18, "Jet-All" is silent on the handle portion and the body portion comprising a plurality of modules. However, it would have been obvious to one of ordinary skill in the art to modify the integral design of "Jet-All" with modules since the modification is merely making something separable for ease of routine maintenance and compact storage and does not present a patentably distinct limitation. [*In re Dulberg*, 289 F.2d 522, 523, 129 USPQ 348, 349 (CCPA 1961)]

Claims 21-28, 33, and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kimbrew-Walter Roses "Jet-All" sprayer in view of U.S. Patent No. 5,573,187 to Ronnie E. Proctor

Regarding Claim 21, "Jet-All" is silent on the nozzle being adapted to direct flow of water in a substantially vertical plane. However, Proctor teaches a hand held spraying apparatus with a nozzle that projects the water in a substantially vertical plane (Proctor Fig. 1 vertical wall spray lines). It would have been obvious to one of ordinary skill in the art to modify the teachings of "Jet-All" with the teachings of Proctor since the distal sections of each apparatus is merely an alternate equivalent nozzle extension off of a handle and the modification is merely a change in shape/orientation to enhance the ergonomic design of the apparatus and to increase the spray coverage area for different size/shape of plants.

Regarding Claim 22, "Jet-All" as modified teaches that at least one of the substantially vertical planes is substantially perpendicular to the nozzle portion and inherently comprising the step of holding the elongated body in a substantially horizontal attitude (Proctor Fig. 1 Element #20 and water spray lines).

Regarding Claim 23 and 33, "Jet-All" as modified teaches that the handle includes a bend point and inherently teaches the step of adjusting the elevation of the body portion by rotating the handle about a proximal end of the handle.

Regarding Claim 24, "Jet-All" as modified inherently discloses advancing and retracting the apparatus into and out of the plant at a plurality of locations, so that water directed by the nozzle simultaneously impacts the top side of a first plant leaf along at least a portion of its length and the underside of a second plant leaf along at least a portion of its length (Proctor Fig. 1 water spray lines).

Regarding Claim 25 and 34, "Jet-All" as modified discloses that the nozzle is adapted to create a substantially planar contiguous wall of water around the circumference of the nozzle (Proctor Fig. 1 water spray lines, Element #38 and 20, Col. 3 line 40-41).

Regarding Claim 26, "Jet-All" as modified discloses that the nozzle is adapted to create two or more substantially planar and contiguous walls of water around the circumference of the nozzle, the walls of water being spaced apart from each other (Proctor Fig. 1 water spray lines, Element #38 and 20).

Regarding Claims 27 and 28, "Jet-All" as modified inherently discloses advancing and retracting the nozzle between leaves of the plant at a plurality of locations, so that

the portions of the wall of water simultaneously impact undersides of leaves generally above the nozzle, top sides of leaves generally below the nozzle, and any matter that may be between the leaves of the plant.

Response to Arguments

Applicant's arguments filed 4 February 2002 have been fully considered but they are not persuasive.

Examiner maintains that "Jet-All" inherently teaches the method steps of the presented claims and that it would have been obvious to one of ordinary skill in the art to combine the teachings of Proctor and "Jet-All." Examiner maintains that Applicant's method and claim language does not distinctively claim the apparatus over that of prior art.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, examiner maintains that there is motivation to look to the teachings of Proctor. Proctor and "Jet-All" are alternate equivalent hand held water spraying apparatuses, both used to produce a planar wall to clean the surface of an object. Examiner maintains that both apparatuses serve similar design goals of effectively cleaning a surface area in an

efficient and timely manner. Proctor teaches that the distal end nozzle extension can have a straight configuration, with a double wall of water, and complete circumferential nozzle coverage. One of ordinary skill in the art would look to modify the 'curved head' of "Jet-All" with the teachings of Proctor to effectively and efficiently treat all threatened areas of a variety of plant types. Each type of plant presents different spatial constraints (e.g. tall thin tree, short bush with dense foliage, etc.) and Proctor presents a well-known alternative to the shape taught by "Jet-All" to meet these constraints.

Furthermore, modifying "Jet-All" with the teachings of Proctor would not get the user wet since the modification is merely to the distal end nozzle extension and not to the elongated body portion taught by "Jet-All." The elongated body of "Jet-All" and the length of the distal section is ample distance from the user to prevent the user from getting wet.

In addition, Examiner maintains that "Jet-All" inherently teaches the method steps of presented claims. How the user orientates the apparatus of "Jet-All" depends primarily on the size of the plant being treated. One of ordinary skill in the art would inherently rotate the apparatus to reach different parts of the plant because the damaging bugs, i.e. aphids, adhere to all surface levels of the plant. Furthermore, the apparatus is moved inwardly when inserting the apparatus under a leaf and to reach the stalk and subsequently moved outwardly when proceeding to another leaf of plant.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 703-305-3010. The examiner can normally be reached on 7:30am-5pm M-F; Alternating Fridays Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 703-308-2574. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-4195 for regular communications and 703-305-0285 for After Final communications. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-4357.

AMV
March 7, 2002

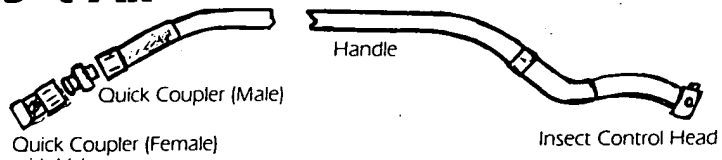
PETER M. POON
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600

Jet-All

The Jet-All is a necessity for the serious rose grower and the Organic gardener.

The Jet-All has a head designed to aid rose growers in the control of insects and spider mites. This unit has three jets positioned on a curved head to permit spraying under the leaves of miniature roses as well as the taller varieties without spray back on the user. The handle has a control valve to establish the desired pressure and a quick coupler for ease of use.

J t-All



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